SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: *(Aviso a Acusado)*

STATE BOARD OF CHIROPRACTIC EXAMINERS

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

DONALD E. GARRINGER

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CLK 0001.00 507-70 R01-84

You have *30 CALENDAR DAYS* after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you: your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS *para presentar una respuesta escrita a máquina en esta corte.*

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

CASE NUMBER: *(Número del Caso)*
495378-2

The name and address of the court is: *(El nombre y dirección de la corte es)*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
1100 Van Ness Avenue
P.O. Box 1628
Fresno, California 93717

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

ROBERT J. ROSATI
800 "M" Street
Fresno, California 93721
(209) 268-4021

DATE: *(Fecha)* SEP 22 1993

Clerk, by *(Actuario)* G. RUTHERFORD, Deputy *(Delegado)*

(SEAL)

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
☐ other:

4. ☒ by personal delivery on *(date)*: Oct 4, 1993

Form Adopted by Rule 982

(See reverse for Proof of Service)

ROBERT J. ROSATI, #112606
800 M Street
Fresno, CA 93721-2717
Telephone: (209) 268-4021

FILED
SEP 22 1993
FRESNO COUNTY CLERK
By _____ G.R. - DEPUTY

Attorney for Plaintiff/Petitioner
Donald E. Garringer

SUPERIOR COURT IN THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

DONALD E. GARRINGER, Plaintiff/Petitioner vs. STATE BOARD OF CHIROPRACTIC EXAMINERS, Defendant/Respondent	)	NO. 495378-2 1. **Complaint for Declaratory Relief** 2. **Petition for Writ of Mandate**

Plaintiff/Petitioner Donald E. Garringer, by this verified complaint/petition seeks a declaratory judgement pursuant to Code of Civil Procedures section 1060 and Government Code section 11350 and a Writ of Mandate pursuant to Code of Civil Procedure section 1085 against Defendant/Respondent California Board of Chiropractic Examiners. Plaintiff/Petitioner Donald E. Garringer ("GARRINGER") alleges as follows:

FIRST CAUSE OF ACTION
(Complaint For Declaratory Relief)

1. Garringer is a self-employed independent adjuster, duly licensed and regulated by the State of California. Garringer is

Armstead vs State Personnel Board
Legacy vs "

the Administrator/Adjuster of the Organization of Self-Insured Schools, a self-insurance liability/property joint powers authority consisting of approximately forty public school districts, and of the Fresno County Self-Insurance Group, a Worker's Compensation self-insurance joint powers authority also consisting of approximately forty public school districts. In the course of his duties as administrator of these joint powers authorities Garringer is frequently obligated to evaluate and assess claims by chiropractors for compensation for services rendered to, among others, injured workers.

2. Defendant/Respondent is the State Board of Chiropractic Examiners ("The Board"). The State Board of Chiropractic Examiners consists of seven members appointed by the Governor of California. Its powers are set forth in section 4 of the Chiropractic Act. The Board's principal offices are in Sacramento, California.

3. Venue of this action is proper in Fresno County for the following separate, independent reasons:

A. Pursuant to Code of Civil Procedure section 393 (1)(b), because Fresno is the county in which Garringer carries on his business and in which he will be damaged by enforcement of the rules and regulations challenged in this proceeding; and

B. Pursuant to Code of Civil Procedure section 404 (1), because The Board is a state agency with its prinicpal offices in Sacramento and therefore venue of this action is proper in Sacramento County, and

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because the California Attorney General maintains an office in Fresno County, California, which allows proper venue in Fresno County.

4. On June 3, 1991 The Board adopted an amended version of California Code of Regulations, Title 16, Rule 302 regarding "Practice of Chiropractic." A true and correct copy of Rule 302 is attached hereto as Exhibit A and incorporated herein.

5. By letter dated July 22, 1991 from Louis E. Newman, Chairman of The Board, The Board implemented, propounded, and circulated an interpretation of Rule 302 designed for general application to all insurers and self-insurers operating in the state of California. A true and correct copy of that July 22, 1991 letter is attached hereto and incorporated herein as Exhibit B and will herein after be referred to as the "INTERPRETATIVE LETTER." Garringer is informed and believes, and thereon alleges, that the INPTERPRETATIVE LETTER has been sent to over 1400 insurers and self-insurers who do business in the state of California.

6. The California Chiropractic Association, an association of chiropractors in the state of California, has accused Garringer of violating Rule 302 and the INTERPRETATIVE LETTER and has filed a complaint against Garringer with the office of Benefit Assistance and Enforcement asking that his records be audited and that he be fined and/or otherwise disciplined for non-compliance with the terms of Rule 302 and of the INTERPRETATIVE LETTER. Garringer denies that he is obligated to comply with Rule 302 and/or the INTERPRETATIVE LETTER because both the rule and the INTERPRETATIVE

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NOV

LETTER and are contrary to law, and were adopted in violation of law, and also because the INTERPRETATIVE LETTER was adopted in violation of the Administrative Procedures Act, Government Code section 11340 et seq.

7. Specifically: the Board has no power to expand or enlarge the scope of chiropractic practice in the state of California; both Rule 302 and the INTERPRETATIVE LETTER impermissably and illegally expand and enlarge the scope of chiropractic practice in the state of California; and the scope of chiropractic practice in the state of California may only be modified, expanded, or enlarged by Constitutional amendment; and the scope of chiropractic practice in the state of California is well-established, to wit:

> A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, and he my use all necessary, mechanical, hygienic and sanitary measures inciden to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine included in the materia medica.
>
> A duly licensed chiropractor may make use of light, air, water, rest, heat, diet, exercises, massage and physical culture, but only in connection with and incident to the practice of chiropractic as hereinabove set forth.

ROBERT J. ROSATI
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ento, CA 93721-2717
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8. Therefore Rule 302 is null and void. Furthermore the INTERPRETATIVE LETTER was adopted without notice and hearing to the public without approval by the Office of Administrative Law, and in violation of the Administrative Procedures Act, Government Code sections 11340 et seq and therefore is null and void.

9. An actual controversy has arisen and now exists between Garringer and the Board relating to their respective rights and duties in that Garringer contends that Rule 302 and the INTERPRETATIVE LETTER are null and void, invalid and unenforceable because they impermissibly and illegally enlarge and expand the scope of chiropractic practice in the state of California, and are in conflict with The Board's statutory authorization and because the INTERPRETATIVE LETTER was not adopted in conformity with the requirements of the Administrative Procedures Act, whereas The Board disputes these contention and contends that Rule 302 and the INTERPRETATIVE LETTER are valid.

10. Garringer desires a declaration with respect to the validity and legality of Rule 302 and the INTERPRETATIVE LETTER.

11. Such a declaration is necessary and appropriate at this time under the circumstances herein in order that Garringer may ascertain his obligations under the law and conform his conduct to those obligations in order to avoid the potential imposition of disciplinary actions and/or fines by agencies which regulate his business.

12. Garringer does not have a plain, speedy and adequate remedy in the ordinary course of law.

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Telephone: (209) 268-4081

Second Cause of Action
(Petition for Writ of Mandate)

13. Garringer incorporates by this reference paragraphs 1 through 12, inclusive of this complaint/petition.

14. The Board, in adopting Rule 302 and in implementing and circulating the INTERPRETATIVE LETTER, and in the manner in which it implemented and circulated the INTERPRETATIVE LETTER, proceeded in a manner contrary to law in that:

A. Rule 302 and the INTERPRETATIVE LETTER impermissibly and illegally expand and enlarge the scope of chiropractic practice in the state of California and were adopted and/or implemented in violation of The Board's statutory authority; and

B. The INTERPRETATIVE LETTER was adopted without notice and hearing and without approval by the Office of Administrative Law in violation of the requirements of the Administrative Procedures Act, Government Code sections 11340 et seq.

WHEREFORE, Garringer prays judgment as follows:

1. For declaration that Rule 302 and the INTERPRETATIVE LETTER, attached hereto as Exhibits A and B, are invalid and were adopted and implemented in violation of The Board's statutory authority, and therefore are null and void, and that Garringer has no legal duty to comply with them (on the first cause of action only);

ROBERT J. ROSATI
800 M Street
Fresno, CA 93721-2717
Telephone: (209) 268-4091

2. That a peremptory Writ of Mandate be issued to the State Board of Chiropractic Examiners directing it to rescind and nullify Rule 302 and the INTERPRETATIVE LETTER, attached hereto as Exhibits A and B;

3. That he recover attorney fees incurred in this action, pursuant to Government Code section 800 and/or Code of Civil Procedure section 1021.5;

4. For an award of costs incurred in this action; and

5. For such other and further relief as the Court deems just and proper.

Dated: September 20, 1993

ROBERT J. ROSATI

ROBERT J. ROSATI
800 M Street
Davis, CA 95721-3717
Telephone: (916) 756-4021

VERIFICATION

I, Donald E. Garringer, declare and state as follows:

1. I am the Plaintiff/Petitioner in this action. I have read the complaint/petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters I believe them to be true.

2. I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

3. Executed at Fresno California on September 21, 1993

Donald E. Garringer

DONALD E. GARRINGER

ROBERT J. ROSATI
800 M Street
[illegible], CA 93721-2717
[illegible]

Newman sent this letter to over 1,400 insurance carriers nationwide who do business in California. The letter dispelled any rumors that these companies could stop payment for physical therapy by DCs.

PETE WILSON

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS
3401 FOLSOM BOULEVARD, SUITE 8
SACRAMENTO, CA 95816
TELEPHONE: (916) 739-3443

July 22, 1991

Attention: Insurance Companies

To Whom It May Concern:

The Board of Chiropractic Examiners has settled California Chapter of the American Physical Therapy Association et al. v. California Board of Chiropractic Examiners. This litigation involved a dispute as to the legal scope of chiropractic practice in California, which is defined in Section 302 of Title 16 of the California Code of Regulation ("Rule 302"). The language of Rule 302 has been amended and noticed as an emergency regulation in California. The California Department of Insurance has previously ruled that insurance companies could not rely on any interim rulings in this litigation and should look to the pertinent regulation that defines the legal scope of chiropractic practice.

The new amended Rule 302 affirms the rights of a chiropractic doctor to use chiropractic methods and techniques to treat any condition, disease, or injury on any patient including a pregnant woman, to diagnose, to use ultrasound, x-ray and thermography, and physical therapy techniques in the course of chiropractic manipulations and/or adjustments. The phrase "in the course of chiropractic manipulations and/or adjustments," allows the use of physical therapy techniques during a course of chiropractic treatment (without requiring an adjustment during every office visit.)

Finally, I would direct your attention to Insurance Commissioner's Bulletin 69-6. This bulletin specifically directs all insurance carriers to reimburse chiropractors for such services as physical therapy and x-ray if such services would be covered by a disability insurance carrier if provided by a medical doctor.

Sincerely,
BOARD OF CHIROPRACTIC EXAMINERS

Louis E. Newman, D.C.

Louis E. Newman, DC
Chairman

EXHIBIT
B

State of California Pete Wilson, Governor

BOARD OF CHIROPRACTIC EXAMINERS
3401 Folsom Boulevard, Suite B
Sacramento, CA 95816-5354
916/739-3445

October 11, 1993

Steven K. Hartzell, Executive Officer
PHYSICAL THERAPY EXAMINING COMMITTEE
1434 Howe Avenue, Suite 92
Sacramento, CA 95825-3291

Dear Mr. Hartzell:

This is in response to your letter of September 30, 1993. Given your five and one-half month delay in responding to my letter of April 19, 1993, I assume that I can conclude, as a practical matter, the issues raised in your letter are not of a particularly pressing nature. I also do not believe that there is much point in belaboring the issues raised in your letter. As you admit, Business and Professions Code Section 2622 only attempts to set forth what the words "physical therapy" and "physiotherapy" mean "for all purposes of this chapter". (Emphasis added.) This section cannot and does not purport to define what these terms mean for the purposes of the Chiropractic Act or for the purposes of the summary adjudication of issues entered by the Sacramento County Superior Court. Since PTEC has not requested the BCE to undertake any specific conduct, and the BCE likewise has no request, I will consider this issue resolved for the time being.

Sincerely yours,

Louis E. Newman, D.C., Chairman
BOARD OF CHIROPRACTIC EXAMINERS

LEN/dw
N2MJ860H.LTR

cc: Vivian R. Davis, Executive Director
Jim Conran, Director, Department of Consumer Affairs
Carl Anderson, P.T., Chairperson, Physical Therapy Examining Committee

Division 4. State Board of Chiropractic Examiners

(Originally Printed 12-5-46)

Article 1. General Provisions

§ 301. Tenses, Gender and Number.

For the purpose of the rules and regulations contained in this chapter, the present tense includes the past and future tenses, and the future, the present; the masculine gender includes the feminine, and the feminine, the masculine; and the singular includes the plural, and the plural, the singular.

History

1. For prior history of sections 300 and 301, see Register 88, No. 23 and 76, No. 50 (Register 90, No. 21).

§ 302. Practice of Chiropractic.

(a) Scope of Practice.

(1) A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto.

(2) As part of a course of chiropractic treatment, a duly licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including, but not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques in the course of chiropractic manipulations and/or adjustments.

(3) Other than as explicitly set forth in section 10(b) of the Act, a duly licensed chiropractor may examine any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice as set forth in this section.

(4) A chiropractic license issued in the State of California does not authorize the holder thereof:

(A) to practice surgery or to sever or penetrate tissues of human beings, including, but not limited to severing the umbilical cord;

(B) to deliver a human child or practice obstetrics;

(C) to practice dentistry;

(D) to practice optometry;

(E) to use any drug or medicine included in materia medica;

(F) to use a lithotripter;

(G) to use ultrasound on a fetus for either diagnostic or treatment purposes; or

(H) to perform a mammography.

(5) A duly licensed chiropractor may employ the use of vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the above substances are also included in section 4052 of the Business and Professions Code, so long as such substances are not included in materia medica as defined in section 13 of the Business and Professions Code.

The use of such substances by a licensed chiropractor in the treatment of illness or injury must be within the scope of the practice of chiropractic as defined in section 7 of the Act.

(6) Except as specifically provided in section 302(a)(4), a duly licensed chiropractor may make use of X-ray and thermography equipment for the purposes of diagnosis but not for the purposes of treatment. A duly licensed chiropractor may make use of diagnostic ultrasound equipment for the purposes of neuromuscular skeletal diagnosis.

(7) A duly licensed chiropractor may only practice or attempt to practice or hold himself or herself out as practicing a system of chiropractic. A duly licensed chiropractor may also advertise the use of the modalities authorized by this section as a part of a course of chiropractic treatment, but is not required to use all of the diagnostic and treatment modalities set forth in this section. A chiropractor may not hold himself or herself out as being licensed as anything other than a chiropractor or as holding any other healing arts license or as practicing physical therapy or use the term "physical therapy" in advertising unless he or she holds another such license.

(b) Definitions.

(1) Board. The term "board" means the State Board of Chiropractic Examiners.

(2) Act. The term "act" means the Chiropractic Initiative Act of California as amended.

Note: The Chiropractic Initiative Act of California is listed in West's Annotated California Codes following section 1000 of the Business and Professions Code, and in Deering's California Codes Annotated as an appendix to the Business and Professions Code.

(3) Duly licensed chiropractor. The term "duly licensed chiropractor" means any chiropractor in the State of California holding an unrevoked certificate to practice chiropractic, as that term is defined in section 7 of the Act, that has been issued by the board.

Note: Authority cited: Sections 1000-4(b) and 1000-10(a), Business and Professions Code. Reference: Sections 1000-5 and 1000-7, Business and Professions Code.

History

1. Renumbering of subsection (b) to subsection (c) filed 7-7-78; effective thirtieth day thereafter (Register 78, No. 27). For prior history, see Register 65, No. 24.
2. Redesignation of section 318 as subsection 302(b) filed 7-7-78; effective thirtieth day thereafter (Register 78, No. 27).
3. Repealer and new section filed 8-4-87; operative 9-3-87 (Register 87, No. 32).
4. Change without regulatory effect of subsection (b)(2) (Register 88, No. 23).
5. Amendment of subsection (a) filed 4-4-91 as an emergency; operative 4-4-91 (Register 91, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-2-91 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (a) with amendments refiled 6-3-91 as an emergency; operative 6-3-91 (Register 91, No. 34). A Certificate of Compliance must be transmitted to OAL by 10-1-91 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6-3-91 order transmitted to OAL 9-27-91 and filed 10-23-91 (Register 92, No. 24).

§ 303. Filing of Addresses.

Each person holding a license to practice chiropractic in the State of California under any and all laws administered by the board shall file his proper and current place of practice address of his principal office and, where appropriate, each and every sub-office, with the board at its office in Sacramento and shall immediately notify the board at its said office of any and all changes, giving both his old and his new address.

Note: Authority cited: Section 1000-4(b), Business and Professions Code. Reference: Section 1000-4(b), Business and Professions Code.

History

1. Amendment filed 2-5-80; effective thirtieth day thereafter (Register 80, No. 6). For prior history, see Register 77, No. 21.
2. Amendment filed 8-4-87; operative 9-3-87 (Register 87, No. 32).

§ 304. Suspension by Another State.

The suspension, revocation or surrender of a license or certificate to practice chiropractic in another state by any person also holding a license under the Chiropractic Act of California may constitute grounds for disciplinary action in this state.

Note: Authority cited: Section 4(b) of the Chiropractic Initiative Act of California (Stats. 1923, p. lxxxviii). Reference: Section 4(b) of the Chiropractic Initiative Act of California (Stats. 1923, p. lxxxviii).

History

1. New section filed 2-5-80; effective thirtieth day thereafter (Register 80, No. 6). For prior history, see Register 76, No. 50.

§ 305. Procedure in Disciplinary Proceedings.

All proceedings relating to the refusal to grant, suspension or revocation of a license to practice chiropractic, or for the reissuance or reinstatement of a license which has been suspended or revoked, or for the disci-

EXHIBIT A

FAX Board of Chiropractic Examiners Phone (916) 227-2790 PAGES 4
TO: Board Members
FROM: (Vivian) DATE: 10/15/93

State of California
M E M O R A N D U M

Date: October 15, 1993

To: Board Members

From: Board of Chiropractic Examiners (916) 227-2790
Vivian R. Davis, Executive Director

Subject: Michael Schroeder's letter to Dr. Newman regarding Garringer vs. BCE

Attached is a copy of Mike's letter on this subject to Dr. Newman. I believe the second full paragraph on the second page is not entirely correct in that it is my recollection that the BCE intervened in the Luly case, and hired private counsel. Otherwise, I believe that Mike accurately represents the arguements.

Michael Schroeder has spoken to me this morning, and has communicated with Joel Primes. Mike has requested that the A.G.'s office request the change in venue, and Joel's staff is working on that at this time. Mike has also requested that I write to the A.G.'s office and request reconsideration. I am drafting that request for Mike's review.

This letter was sent to Dr. Newman Wednesday afternoon; however, he did not receive it until this morning. Mike had intended that the Board have it yesterday.

If you have any questions or comments, please contact me or Dr. Newman.

HART, KING & COLDREN
ATTORNEYS AT LAW

ROBERT S. COLDREN
GARY P. KING
WILLIAM R. HART
CANDICE L. CAMPBELL
JOHN H. PENYCOOK
C. WILLIAM DANLEY
—
MARK V. ABDORIAN
HAL U. BLOCK
EDUARDO A.C. BOLT
SAMUEL H. BOYLES, III
BARBARA J. DEELE
LORI A. DONAHUE
CHRISTOPHER B. ELLIOTT
MARK S. FAULKNER
RICHARD P. GRABER
THOMAS H. GUTE
JAMES M. ONSERT
LINDA J. LESTER
JACQUELLE S. MONAKER
JANICE L. MURRELL
NORMAN K.H. NIEDE
GLENN MINTO
ROBERT J. MULVIHILL
PETER K. SIMMS
KENNETH I. WEXELL
M. COLLEEN WELLS
OF COUNSEL
MICHAEL I. SOBOROFF*
DAVID A. BROWN
BERNARD S. STEIN
*a Professional Corporation

October 13, 1993

VIA TELECOPY TRANSMITTAL

Louis Newman, D.C., Chairman
BOARD OF CHIROPRACTIC EXAMINERS
405 E. Lexington Ave.
Suite 103
El Cajon, CA 92020

Dear Lou:

As you know, the Board of Chiropractic Examiners ("BCE"), has just been sued in the Fresno County Superior Court by Donald E. Garringer. There are two grounds for Mr. Garringer's lawsuit. First, Mr. Garringer claims that the BCE improperly adopted Section 302(a) of Title 16 of the California Code of Regulation in a way that improperly expanded the legal scope of chiropractic practice. Second, Mr. Garringer claims that your letter of July 22, 1991 to various insurance carriers interpreted Section 302 in a way that improperly expanded the legal scope of chiropractic practice.

It is my understanding from a phone message that was left today by Joel Primes that the California Attorney General's Office has determined that it does not have a conflict of interest in this matter and it will proceed to represent the BCE. For the reasons set forth below, I strongly disagree with this determination and believe that it is legally and ethically improper for the California Attorney General to represent the BCE in this matter. I want to make clear that none of the statements contained in this letter should in any way be interpreted as any sort of an adverse comment regarding Joel Primes' qualifications or ethics. I have the highest regard for Joel Primes and do not believe that this decision was made by him and I have no reason to believe that he necessarily agrees with it.

I do not have the same high regard for the way in which the California Attorney General has dealt with conflicts of interest involving the BCE in the past. There has been a pattern of behavior by the California Attorney General where it has taken

actions damaging to the BCE when a clear conflict of interest existed.

For example, the most disastrous legal decision from the standpoint of the chiropractic profession was CREES v. California Board of Medical Examiners. As you may recall, both the California Medical Board and the Physical Therapy Examining Committee argued that case vigorously against the BCE in the recent litigation regarding Section 302. Investigation of the original pleadings filed in CREES makes clear why this case had such a disastrous result for the chiropractic profession. The BCE and the California Medical Board had the same lawyer, a Deputy Attorney General working for the California Attorney General's Office.

Similarly, the California Medical Board filed suit against John C. Luly, D.C. in San Diego claiming that colonic irrigations were outside the legal scope of chiropractic practice. The California Medical Board's attorney was the BCE's attorney, the California Attorney General. Despite the fact that the California Attorney General determined that there was a conflict of interest and refused to represent the BCE, the California Attorney General continued to represent the California Medical Board against the BCE's interests.

The California Attorney General has also issued written opinions that are directly contrary to some of the provisions of Section 302. In recent Section 302 litigation, I was forced to argue against these opinions and asked the Court to give them no weight. It is hard to believe that the California Attorney General would be able to plausibly make the same arguments.

In addition, as you may recall, the BCE conducted public hearings regarding the adoption of the current version of Section 302. As you also may recall, Joel Primes in open public session, testified against the current version of Section 302. As you also may recall, this testimony was later on used against the BCE in the subsequent litigation relating to Section 302 and in my judgment was at least partly to blame for some initial adverse rulings in the case. It is hard to imagine how the California Attorney General, if they are representing the BCE, will be able to argue plausibly that its own testimony should be disregarded by the Court.

The chiropractic profession and the public gained a certain degree of security from the hard fought battles relating to Section 302. These victories were gained at a high emotional and financial cost. I simply do not believe that there is any

appropriate justification for allowing these hard fought achievements to be potentially endangered by such an obvious conflict of interest.

Sincerely yours,

Michael J. Schroeder, P.C.

MJS/dw.789

cc: Vivian R. Davis, Executive Director
Joel S. Primes, Esq.

CCA Takes on Workers' Compensation Adjustor

Editor's Note: During the past year, CCA has received various complaints from members alleging arbitrary and/or improper review of workers' compensation cases and claims by the Garringer Adjusting Company (Garringer). In response to these complaints, CCA requested that the Office of Benefits Assistance and Enforcement (OBAE) audit Garringer and the school districts which Garringer serves. The following entries chronicle the correspondence between CCA, OBAE and Garringer. For copies of the actual letters referenced, CCA members may contact the CCA office at (800) 300-4222.

November 23, 1992

• After receiving complaints from CCA members in the Central Valley Chiropractic Society, Dr. James Peterson, then CCA President, sent a letter to the Superintendent of the Washington Unified High School requesting that Mr. Donald E. Garringer (Garringer), of Garringer Adjusting Company, be instructed to pay workers' compensation claims for injured workers treated by doctors of chiropractic.

December 4, 1992

• Garringer responded to CCA by stating that he disputed whether a doctor of chiropractic could render physical therapy modalities absent the manipulation or adjustment of the spine or other joints. Garringer also asserted the employer's right to medical control for 30 days to preclude a change of physicians to a doctor of chiropractic if the initial treating/examining medical doctor advised against chiropractic treatment.

...The dispute hinges on whether a chiropractor may render physical therapy modalities absent the manipulation or adjustment of the spine or other joints at or near the site of injury...

— Excerpt from Garringer letter 12/4/92

June 30, 1993

• CCA's legal counsel Ms. Catherine Kay (Kay), of Manatt, Phelps & Phillips, responded to Garringer's December 4, 1992 letter. Kay corrected Garringer's misstatements and misinterpretations of the laws governing the practice of chiropractic and the rights of employees and providers under California's workers' compensation scheme and demanded that Garringer immediately revise his pre-designation and payment policies to comply with California law.

July 7, 1993

• Garringer responded to legal counsel by stating that he would in no way change his future conduct in the handling of workers' compensation claims.

...Pursuant to the Labor Code, the Office of Benefit Assistance and Enforcement (OBAE) is authorized and obligated to audit and take action, included assessing fines and penalties, against workers' compensation administrators and self-insured employers who operate in violation of workers' compensation statutes and regulations...

— Excerpt from Kay letter 8/20/93

August 20, 1993

• On behalf of CCA, Kay wrote to the Office of Benefits Assistance and Enforcement (OBAE) of the Division of Workers' Compensation to request an audit of Donald E. Garringer Adjusting Company based on Garringer's improper conduct involving two issues:

1. Violation of Labor Code Section 4600 - Refusal to pay for chiropractic services which are reasonably required to cure or relieve from the effects of a work-related injury in violation.

2. Violation of Labor Code Section 4601 - Refusal to honor employee pre-designation of a treating chiropractor.

August 24, 1993

• Garringer wrote a rather hostile response to his attorney, Mr. Robert J. Rosati (Rosati), regarding CCA's request for an OBAE claim audit and directed Rosati to respond to Kay's charges as appropriate, threatening legal action. **(See complete letter reprinted on page 22.)**

GARRINGER (Continued on next page)

...It is the claims administrator's position that the personal physician whom the employee may designate prior to injury to provide treatment from the date of injury cannot be a chiropractor. But is also clear that the alternate physician that the employee may request "at any time after the injury" and that the employer must provide within five days may be the employee's personal chiropractor.

Your letter requests this office to conduct an audit of the claims administrator, on the basis of the practices your describe and, while I cannot offer assurance of an audit, I can assure you that your complaint will receive strong consideration in the selection of audit subjects, pursuant to LC §129(b)...

— Excerpt from OBAE letter 10/22/93

...The issues involved in the Garringer litigation are of crucial importance to the chiropractic community in California. Accordingly, the CCA, which represents approximately 3,000 California doctors of chiropractic, seeks to ensure that the BCE is represented as vigorously as possible by counsel that has neither any actual or apparent conflict of interest in the matter. Given the Attorney General's prior public statements questioning the legality of 16 CCR 302 and prior representation of adverse agencies in turf war litigation concerning that regulation, it is impossible to imagine how the Attorney General's office could provide that representation. At a minimum, the office always will be operating under the cloud of an apparent, if not an actual, conflict in the matter.

Based on the above, CCA hereby requests that the Attorney General's office determine itself to be conflicted from representing the BCE in this litigation, and allow the BCE to hire appropriate outside counsel which will be free from both the appearance and actuality of conflict in this case...

— Excerpt from CCA letter 10/21/93

September 1, 1993

• Rosati wrote to OBAE for Garringer and addressed the physical therapy issue and the Labor Code interpretation issue. Garringer asserted that Rule 302 was adopted in excess of and in violation of the powers of the State Board of Chiropractic Examiners (SBCE) and therefore was void. Further, Garringer asserted that CCA's interpretation of the Labor Code was incorrect.

September 22, 1993

• Garringer followed up on his threat and filed suit against the SBCE alleging that Rule 302 and the interpretive letter* are invalid and were adopted and implemented in violation of the Board's statutory authority, and therefore are null and void, and that there is no legal duty to comply with them.

(* July 22, 1991, letter from Louis Newman, SBCE Chairman, affirming the rights of chiropractic doctors to use physical therapy techniques during a course of chiropractic treatment without requiring an adjustment during every office visit.)

October 21, 1993

• Dr. Bradley J. Sullivan, CCA President, wrote to Attorney General, Daniel E. Lundgren, requesting that Attorney General's office determine itself to be conflicted from representing the SBCE in the Garringer litigation and allow the SBCE to hire appropriate outside counsel which will be free from both the appearance and actuality of conflict in this case.

October 22, 1993

• Kay Received a response from OBAE confirming that "the alternate physician that the employee may request 'at any time after the injury' and that the employer must provide within five days may be the employee's personal chiropractor." Further, OBAE assured that the complaint against Garringer would receive strong consideration in the selection of audit subjects.

...The Garringer letter's attempt to provide factual explanations for Garringer's actions proves nothing, As an example, as you are well aware, there are significant impediments and financial disincentives for individual providers to challenge workers' compensation payment denials through the Workers' Compensation Appeals Board. Accordingly, the purported lack of WCAB challenges against Garringer is more likely a reflection of the powerlessness of the individual providers within the system than proof that Garringer acts properly in his claims adjustment practices. Overall, CCA continues to believe that the issues raised in the August 20, 1993 letter are legitimate and warrant review of Garringer's practices by the Office of Benefit Assistance and Enforcement "OBAE". Indeed, the only way to test the factual assertions Garringer has made is to conduct the audit CCA has requested.

To CCA's knowledge, no other insurer or third party administrator in California refuses to pay for reasonable and necessary physical therapy techniques provided by chiropractors for visits in which no concomitant chiropractic manipulation is performed. These other payors understand the nature of chiropractic treatment, including the appropriateness of using physical therapy techniques, as part of a course of chiropractic care.

As you may be aware, Garringer has filed a declaratory relief action against the Board of Chiropractic Examiners challenges the validity of Section 302 and the July 22, 1991 letter. We believe this lawsuit is meritless and merely a vain attempt by Garringer to legitimize his position, stave off an audit, and thereby delay in fulfilling his proper payment obligations under the workers' compensation scheme. We respectfully urge OBAE to move forward on the request for audit of Garringer without waiting for the resolution of this lawsuit.

CCA believes that the correspondence by Garringer and his legal counsel, and Garringer's actions in filing the lawsuit reflect Garringer's continued antipathy toward the chiropractic profession and the rights of injured employees under California law to control the course of their treatment.

In light of the foregoing, on CCA's behalf, we once again respectfully request OBAE to audit Garringer's workers' compensation claims adjusting practices...

— Excerpt from Kay letter 10/22/93

October 22, 1993

• After receiving OBAE's response, Kay drafted a follow-up letter to OBAE again requesting that Garringer be audited. Kay also informed OBAE of Garringer's filing suit against the SBCE. Kay further asserted that the correspondence by Garringer and his legal counsel, and Garringer's actions in filing the lawsuit reflect Garringer's continued antipathy toward the chiropractic profession and the rights of injured employees under California law to control their course of treatment. ❖

(See letter on next page.)

Donald E. Garringer Adjusting Company

All Lines Claim Service

Robert J. Rosati
Attorney at Law
800 "M" Street
Fresno, CA 93721

August 24, 1993

RE: Request for OBAE Claim Audit by the California Chiropractic Association.

Dear Mr. Rosati:

My remarks are directed to the request of CCA for an OBAE audit of my claim files. As I see it, that letter touches on the following things:

1) That CCA has received "numerous complaints" regarding Garringer's "flagrant violations of the workers' compensation statutes and regulations."
2) Said violations include: a) Refusal to pay for chiropractic services; b) Refusal to honor L.C. 4601 employee predesignations; c) "Garringer denies or discounts proper claims for services without apparent justification"; d) When a chiropractor asks for an explanation of why a fee bill is reduced, "Garringer mischaracterizes: the services rendered in an attempt to justify his payment decisions; e) That "certain other issues concerning Garringer's practices have been resolved to CCA's satisfaction."

Refusal to pay for chiropractic services:

Claim No. 91-0128, Georgia Jeffries v. Washington Union High involved a 3/31/92 back injury where the claimant obtained initial treatment from chiropractor Molthen instead of the district's predesignated medical doctor. She was made to consult that medical doctor, and, because of her insistence that she wanted Dr. Molthen to treat, the medical doctor gave her a prescription for "physical therapy" (not chiropractic adjustments) and told her she could go to Dr. Molthen for that therapy. Unbeknownst to the referring medical doctor, chiropractors are unlicensed to perform physical therapy without associated "adjustments." Subsequently, based on the opinion of an Orthopedist examiner (Giles Floyd, M.D.), we paid for chiropractor Molthen's treatment only through 4/17/92. On 5/7/92 Dr. Molthen filed an $869 lien with the WCAB, but never pursued it. We closed our file on 2/8/93, ready to reopen it at any time the chiropractor filed a Declaration of Readiness. The WCAB is the correct venue for the dispute involving Dr. Molthen's lien. Our defense would be based on the initial doctor's opinion that chiropractic adjustments were contraindicated and he mistakenly believed that chiropractors could legally perform physical therapy without concomitant adjustments (which they can't), plus the opinion of Orthopedist Giles Floyd.

Most chiropractors argue that a carrier's only recourse in disputes such as the above is to petition for a change of physicians. I disagree. At the time of the dispute with Dr. Molthen, I acknowledged the need for treatment in the form of "physical therapy," only disputing the need for "chiropractic adjustments." There is case law (Christofilis v. Homeland Ins. Co. 1986, SRO 40936, 14 CWCR 185), that a work comp judge can decide the issue of liability for a particular mode of treatment, a request for change of physicians not being required.

There have been other times (not numerous), when I have refused to pay for chiropractic treatment based on medical doctor's opinion that it was either not beneficial or even medically contraindicated. The most frequent occurrence is the denial of unauthorized chiropractic treatment if the employee did not predesignate a chiropractor, and we thus invoke the employer's right to control treatment for the initial 30-days. The law is clear that the expense of such unauthorized treatment by a non-predesignated medical doctor or chiropractor during the first 30-days is not legally owed by the employer. Were we to look at each individual case, the chiropractor either filed a lien with the WCAB or simply did not attempt to legally overcome my refusal to pay. In each instance that I have defended such a lien action, the WCAB verdicts have all been in my favor. Also, in 33 years I have never had a Judge impose a 10% penalty for improper claims handling, a record which the CCA attorney hopes to tarnish.

Refusal to honor L. C. 4601 employee predesignations:

I have not done this one single time and defy anyone to refer to a specific claim in my office which shows to the contrary.

If a chiropractor is predesignated, without exception I pay for that initial chiropractic treatment — most times for a period of months. Then, finally, I go to the expense of collecting the prior chiropractic/medical record, sending the claimant either to another chiropractor or a medical doctor for an opinion regarding continued chiropractic treatment. If that opinion refutes the need for continued chiropractic adjustments and/or manipulation, I will not pay the predesignated physician from that point on. Should either claimant or the predesignated physician believe my action unwarranted, the WCAB is the proper venue for resolution of the dispute. As stated, in the few instances that have gone to trial, I have yet to lose a defense verdict.

Garringer denies or discount proper claims without justification:

As for unjustly denying claims, OBAE is welcome to review my files for a single such instance. There simply is no grounds for CCA's libelous assertion to the contrary and I challenge them to provide documentary evidence which proves otherwise.

In relation to "discounting" claims, I do reduce all chiropractic and physicians' billings to comply with the Fee Schedule. No one can show me or OBAW a billing where a fee reduction was based on "Garringer's mischaracterization" of the service rendered. Initial charges over a 0015 level, or charges in excess of 90050 for follow-up exams, do receive close scrutiny, the provider usually being asked to explain the reasons for the higher charge. Reductions in fees are never made arbitrarily, and, always, the lien process is explained to the provider in the event the reduced payment is unacceptable.

That certain other issues have been resolved Garringer to CCA's satisfaction.

I have not conceded a single thing to CCA. This statement is a lie and designed to give the impression that through CCA's "education," other improprieties by Garringer have been corrected. The inference is an ignorant Claim Administrator who has benefited from Ms. Kay's guidance.

Finally, it is my position that the proper venue for claims disputes between me and chiropractors lies with the Workers' Compensation Appeals Board. Certainly, I deplore the attempts of intimidations by the politically-oriented firm of Manatt, Phelps & Phillips — undoubtedly, not one of whom is familiar with the legalities of a work comp claim. As for the OBAE audit requested by the libelous Ms. Kay, my files have always been handled with the visualization of an Auditor peering over my shoulder.

No Claims Examiner relishes an OBAE audit, but I suppose that is a foregone conclusion after Ms. Kay's distortions. I wouldn't mind her libelous accusations so much, were it not for the fact that she saw fit to give a copy of her letter to my client. Were the client to believe that "smoke" and "fire" go hand in hand, Ms. Kay's attack could prove most damaging. In addition, those accusations impugn not only my personal reputation, but also the reputation of the Washington Union High School District and the other district members of the JPA whom I represent.

Please respond to Ms. Kay's libelous charges in whatever manner you deem appropriate.

Very truly yours,
Donald E. Garringer

BRIAN A. SMITH, D.C.
3685 MOTOR AVE. SUITE 250
LOS ANGELES, CA. 90034
(310) 559-6584

October 25, 1993

Peter J. Daniels, D.C., J.D.
9033 Century Blvd. Suite 400
Los Angeles, Ca. 90045

Dear Dr. Daniels,

I have enclosed a copy of a lawsuit filed on Sept. 20, 1993 against the BCE by Donald E. Grabinger. The plaintiff alleges the BCE's actions regarding section 302 are illegal due to the Crees decision which prohibits expansion of the scope of practice by the BCE.

In your estimation, could the same argument be applied, except in reverse? Can the Crees decision be used to support the argument that the BCE can not curtail or change the scope of practice as in their recent actions regarding section 317?

If so, would a separate lawsuit be required or could a group "tag onto" this lawsuit? Is the BCE the correct defendant? I thought they have immunity from this type of lawsuit. Would the State of California be a more correct defendant?

In your best estimation, could you tell me what your costs would be to file this type of lawsuit or to "tag onto" the existing one, if this is something you would care to handle? If you would not wish to handle this, could you recommend someone who would? Do you think the attorney's fees involved would be recoverable pursuant to Government code section 800 and/or Code of Civil Procedures section 1021.5?

You may call or write me at your earliest convenience. I anxiously await your response.

Sincerely,

Dr. Brian A. Smith

Re: Garringer v BCE

Scope (302) v Ethics (317)

Joel Primes is OAL representative for BCE. He has stated Garringer can not lose.

BCE is being petitioned by Michael Schroeader to have him represent BCE. His 3 page letter and the Fax cover sheet from Vivian Davis to BCE members is confidential. Obtained from Jim Holland, DC

CA Department of Consumer Affairs needs to be petitioned for funding for use of non-AG representation. Marcia Carlton (DCA) has not received any such request from BCE.